

(2016) 03 OHC CK 0028
In the Orissa High Court
Case No : BLAPL No. 7111 of 2015

Rama Chandra Hansdah

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 101, Article 101 (4), Article 101(4), Article 102
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120-B, Section 409, Section 420
Prize Chits and Money C

Citation : (2016) 3 Crimes 83 : (2016) sup2 CutLTCriminal 43

Hon'ble Judges : S.K. Sahoo, J.

Bench : Single Bench

Advocate : Asim Amitabh Dash, B.K. Parida, A.N. Patnaik and Munmun Panda, for the Appellant; K. Raghavacharyulu, Special Public Prosecutor and V. Narasingh, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sahoo, J.—1. Earlier the bail application of the petitioner Rama Chandra Hansdah under section 439 Cr.P.C. was rejected on merits in BLAPL No. 2600 of 2015 vide order dated 14.08.2015.

The petitioner who is an elected member to the 16th Lok Sabha in 2014 for Mayurbhanj Constituency in Odisha is arrayed as an accused in RC.50/S/2014-SCB/Kol. Dated 26.06.2014 corresponding to SPE Case No. 45 of 2014 pending in the Court of learned C.J.M., CBI, Bhubaneswar in which charge sheet has been submitted on 19.02.2015 under sections 120-B, 409 and 420 of the Indian Penal Code and sections 4, 5 and 6 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978.

The petitioner was taken into custody in connection with the case on 04.11.2014 and he was forwarded to Court on 05.11.2014. After rejection of the bail order by this Court in BLAPL No. 2600 of 2015 vide order dated 14.08.2015, the

petitioner approached the Hon"ble Supreme Court in Special Leave to Appeal (Crl.) No. 7882 of 2015 which was disposed of on 24.09.2015 with the following orders:-

"After arguing the matter at considerable length, learned counsel for the petitioner seeks leave to withdraw this petition reserving liberty for the petitioner to file a fresh application for grant of bail after the Trial Court frames charges in the case. The Special Leave Petition is accordingly dismissed as withdrawn. We direct that the learned Trial Court shall make an endeavour to expedite framing of charges in accordance with law."

The petitioner without waiting till the charges are framed by the Trial Court, moved an application for bail before the learned Sessions Judge, Khurda at Bhubaneswar in Bail Application No. 1648 of 2015 which was rejected on 10.12.2015. The rejection order which is annexed to this bail application as Annexure-3 indicates that the prayer for bail was moved on the ground that Winter Session of Parliament had commenced from 26.11.2015 and it was to continue till 23.12.2015 and the petitioner prayed for his release on bail to attend the Winter Session. It was further contended that the petitioner was required to submit his assets return for which he had received a notice from the Lok Sabha Secretariat (Privileges and Ethics Branch). It was further contended that due to long detention in jail custody, the petitioner has not availed the health card under Central Government Health Scheme as such he was deprived of securing adequate medical facilities for his son and wife, who are suffering from chronic cold, suspected bronchitis and other ailments. The learned Sessions Judge took into consideration the rejection of the bail order of the petitioner four times by him so also by the High Court in BLAPL No. 2600 of 2015 vide order dated 14.08.2015. The learned Court also took into consideration the fact that the petitioner approached the Hon"ble Supreme Court for bail but withdrew the bail application to move afresh for bail after the Trial Court frames charges in the case. The learned Court further held that since the case was posted in the Trial Court to 11.12.2015 for consideration of charge, as per the direction of Hon"ble Supreme Court, the bail application was held to be a premature one and accordingly the same was rejected.

2. In the present bail application, though prayer was made to enlarge the petitioner on bail on any terms and conditions but during argument Mr. Asim Amitabh Dash, learned counsel for the petitioner fairly submitted that he is not moving the bail application on merits but only confining his argument for interim bail for a period of one month.

The learned counsel for the petitioner urged that the petitioner being an elected member to the Lok Sabha is required to attend the Seventh Session of Sixteenth Lok Sabha which has already commenced since 23rd February 2016 and the petitioner has received summons from the Secretary General in that respect and there is every possibility of disqualification in case of the failure of the petitioner to attend the session of Lok Sabha in view of Article 101 (4) of the Constitution

of India.

The learned counsel further submitted that the petitioner is required to submit statements of his assets under the relevant rules applicable to the Members of Parliament and in the event the petitioner is granted interim bail, he will be in a position to prepare the statements and submit it before the Lok Sabha Secretariat in time.

The learned counsel further submitted that the MPLAD Scheme fund which was allotted to the petitioner has not been spent due to the detention of the petitioner for which various project works could not commence and the people of the constituency of the petitioner are being deprived of the benefit of the scheme.

The learned counsel further submitted that the petitioner is suffering from cervical spondylitis for which he is being continuously under treatment in regional spinal injury centre and it is necessary for availing better treatment in any other specialized hospital. In support of such contention, the learned counsel for the petitioner has annexed the medical documents of Capital Hospital, Bhubaneswar as well as S.C.B. Medical College and Hospital, Cuttack.

The learned counsel filed some medical documents with a memorandum and submitted that the wife of the petitioner namely Phulamani Marandi is suffering from dysfunction of uterine bleeding and therefore she treated herself at Capital Hospital, Bhubaneswar and thereafter for better treatment, she consulted the gynecology specialist in AMRI Hospital, Bhubaneswar and the doctor of AMRI Hospital advised her to undergo total laparoscopic hysterectomy. According to the learned counsel for the petitioner at the time of total laparoscopic hysterectomy surgery of his wife, the presence of the petitioner is very much required in the interest of natural justice.

3. Mr. K. Raghavacharyulu, learned Special Public Prosecutor, CBI being ably assisted by V. Narasingh while opposing the prayer for interim bail contended that when the petitioner has withdrawn the bail application in the Hon'ble Supreme Court to file a fresh application for grant of bail after the framing of charge in the Trial Court, there was no urgency on the part of the petitioner to move for interim bail without waiting for framing of charge.

The learned counsel for the CBI contended that the petitioner can seek leave of absence from the House of Lok Sabha to avoid his seat falling vacant in view of the provisions under Article 101 (4) of Constitution of India because of his detention in custody. The learned counsel for the CBI drew the attention of this Court to the letter dated 30.04.2015 issued by Lok Sabha Secretariat wherein the House granted leave of absence of the petitioner from the sittings of the House from 24.11.2014 to 23.12.2014 and 23.02.2014 to 19.03.2015.

The learned counsel for the CBI further contended that no notice from Lok Sabha Secretariat has been filed by the petitioner regarding submission of statements of his assets under the relevant rules applicable to the Members of Parliament

and therefore such a ground cannot be entertained for grant of interim bail.

The learned counsel for the CBI contended that the allegations against the petitioner are very serious in nature and the petitioner has misutilised his power as the MLA of Odisha Legislative Assembly from Saraskana Constituency so also that of a Parliamentarian and indulged himself in swallowing public money being one of the key conspirators in the chit fund scam case and therefore he should not be given further scope to utilize the MPLAD Scheme fund which has been allotted to him in the larger interest of public as well as State.

The learned counsel for the CBI further contended that even though the petitioner is detained in custody but he has been provided with all kinds of medical facilities in premier health institute of the State which is apparent from the medical documents filed by the petitioner. Similarly, the wife of the petitioner is also consulting doctors at different hospitals for the treatment of her ailment and therefore for the medical grounds taken by the petitioner, he does not deserve to be released on interim bail.

4. Articles 101 and 102 of the Constitution of India together include all circumstances in which a membership of either House of Parliament comes to an end and the seat becomes vacant. The Constitution does not contemplate or provide for the membership of a Member of Parliament coming to an end in any manner other than what is specifically provided in Articles 101 and 102. Therefore, there cannot be cessation of membership, de hors Articles 101 and 102, by "expulsion" or otherwise. Article 101(4) provides that if for a period of sixty days a member of either House of Parliament is, without permission of the House, absent from all meetings thereof, the House may declare his seat vacant. A member of either House of Parliament in order to avoid disqualification due to absence for a period of sixty days or more has to seek permission to stay absent for a long period under unavoidable circumstances. It is common ground that if a member is detained or otherwise prevented from attending the session of the House for personal reasons and asks for permission of the House, usually such permission is granted. A vacancy to occur under Article 101(4), there should be a declaration by the House.

On perusal of the letter dated 18.03.2015 issued by the Lok Sabha Secretariat to the petitioner who by then was not attending 54 sittings of the House continuously, the relevant paragraphs read as follows:-

"3. In this connection, I am also to invite your attention to para 16 of the Thirteenth Report of the Committee on Absence of Members from the Sittings of the House (First Lok Sabha), which is reproduced below:-

"In certain cases the Committee observed that Members applied for leave of absence after the expiry of the period of sixty days of continuous absence from the sittings of the House. In this connection the Committee observed that unless applications for leave of absence were sent in time in future, there might be complications and the Committee might find it difficult to recommend

condonation of the period of absence in such cases."

4. I am further to state here that it is settled position that a member under detention can attend sittings of the House only with the permission of the competent Court and the Lok Sabha Secretariat has no role in this regard. In so far as the issue of a member's seat falling vacant in view of detention under the provisions of Article 101(4) of the Constitution is concerned, it is stated that "on the recommendation of the Committee on Absence of Members, Lok Sabha has laid down the following grounds on which leave could be granted to members:-

...(v) Detention in jail;", (Kaul and "Shakdher 6th edn.P.409)

5. Under the circumstances, you can attend sittings of the House only if the competent Court permits. Otherwise, you may seek leave of absence from the House to avoid your seat falling vacant in view of provision of Article 101(4) of the Constitution."

On perusal of the letter dated 30.04.2015 issued by the Lok Sabha Secretariat to the petitioner, it indicates that in reply to the letter dated 20.03.2015 of the petitioner regarding leave of absence from the sittings of the House, on 30.04.2015 the House granted leave of absence to the petitioner from the sittings of the House from 24.11.2014 to 23.12.2014 and 23.02.2015 to 19.03.2015.

In view of such letters produced by the learned Special Public Prosecutor for C.B.I., the apprehension of the petitioner that there is every possibility of disqualification in case of his failure to attend the session of Lok Sabha in view of the provision under Article 101 (4) of the Constitution of India is totally misconceived. Like the previous occasion, the petitioner can seek for leave of absence from the sittings of the House in view of his detention in jail custody by filing proper application which is to be considered by the concerned Committee of the House. Thus the first ground taken by the petitioner for interim bail is not acceptable.

5. The second ground taken by the petitioner is that he has to submit statements of his assets before the Lok Sabha Secretariat under the relevant rules applicable to the Members of Parliament and in the event the petitioner is granted interim bail, he will be in a position to prepare the statements. It is contended by the learned Special Public Prosecutor for C.B.I., no notice from Lok Sabha Secretariat has been filed by the petitioner calling upon him for submission of such statements. I am of the humble view that in case any such notice is received by the petitioner from Lok Sabha Secretariat regarding submission of statements of his assets, the Jail Authorities shall provide all necessary facilities to the petitioner inside the jail in order to prepare such statements. Therefore, the second ground taken for release on interim bail is also not sustainable.

6. The third ground taken by the petitioner is that MPLAD Scheme fund which was allotted to the petitioner could not be utilized properly for which various

project works could not commence and the people of the constituency of the petitioner are being deprived of the benefit of the scheme. As pointed out by the learned Special Public Prosecutor for C.B.I., the allegations against the petitioner are very serious in nature and the petitioner has allegedly misutilised his power as the MLA of Odisha Legislative Assembly from Saraskana Constituency so also that of a Parliamentarian and indulged himself in swallowing public money being one of the key conspirators in the chit fund scam case. Under MPLADS, the role of the Members of Parliament is limited only upto recommendation of works. Thereafter, it is the responsibility of the District Authority to sanction, execute and complete the works as recommended by Members of Parliament within the stipulated time period. There is no material available on record that the local developmental works in Mayurbhanj district have been jeopardized in any manner because of non-utilization of MPLADS. On the assumptions that some difficulties may arise in certain spheres for such non-utilization, the same cannot be a ground to grant interim bail to the petitioner in the larger interest of public as well as State particularly in view of the nature and seriousness of economic offence in which the petitioner is allegedly involved and its impact on the society.

7. The fourth ground taken by the petitioner is that the petitioner is suffering from cervical spondylitis for which he is being continuously under treatment in regional spinal injury centre and it is necessary for availing better treatment in any other specialized hospital. The medical documents which have been annexed to Misc. Case No. 26 of 2016 as Annexure-4 series would indicate that the petitioner was taken to Capital Hospital, Bhubaneswar, S.C.B. Medical College and Hospital, Cuttack and Regional Spinal Injury Centre situated inside S.C.B. Medical College and Hospital Campus, Cuttack. The medical documents of January, 2016 of S.C.B. Medical College and Hospital, Cuttack nowhere indicates regarding necessity of availing any better treatment in any other specialized hospital. Therefore, in absence of any medical documents to show the necessity of the treatment of the petitioner in any other specialized hospital, there cannot be any compelling reason to enlarge the petitioner on interim bail at this stage when the petitioner is being provided necessary treatment for his ailment. However, in view of the plea regarding the health of the petitioner, I direct that all the timely medical help shall be made available to him.

8. The fifth ground taken by the petitioner is the ailment of the wife of the petitioner. During course of hearing, a memorandum containing certain medical documents were filed which indicate that on 21.03.2016 wife of the petitioner namely Phulamani Marandi was treated as outdoor patient at Capital Hospital, Bhubaneswar. On the same day she was also treated at AMRI Hospital, Bhubaneswar and she was advised to undergo total laparoscopic hysterectomy.

As per medical science, a laparoscopic hysterectomy is a minimally invasive surgical procedure to remove the uterus. A laparoscopic hysterectomy is usually done as an outpatient procedure. The recovery period for this laparoscopic procedure is one to two weeks. Taking note of the medical documents, it appears

that Phulamani Marandi had visited different hospitals. It is not the case of the petitioner that there are no other family members or relatives to take care of his wife at the time of such surgical operation. The contentions raised by the learned counsel for the petitioner that the presence of the petitioner is very much required at the relevant time of total laparoscopic hysterectomy in the interest of natural justice cannot be accepted as the nature and gravity of the offence outweighs any such sympathetic consideration. Therefore, I am of the humble view that there is no necessity to grant interim bail to the petitioner on the medical ground of wife's ailment.

9. In view of the aforesaid discussions, when the bail application of the petitioner was rejected on merits on 14.08.2015 in BLAPL No. 2600 of 2015 and the bail application was withdrawn before the Hon''ble Supreme Court on 24.09.2015 seeking liberty to file fresh application for grant of bail after the Trial Court frames charges in the case and when the charges have not yet been framed by the Trial Court and the grounds taken for grant of interim bail are not satisfactory, in view of the nature and seriousness of the economic offence alleged against the petitioner, I am not inclined to grant interim bail to the petitioner in the larger interest of public and state.

Accordingly, the bail application sans merit and hence stands rejected.